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December 31, 1980

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ARIZONA ATTORNEY GENERAL

INTERAGENCY

Mr. Harold Scott
Assistant Director
Division of Property & Special Taxes
Arizona Department of Revenue
State Capitol
Phoenix, Arizona 85007

Re: I80-233 (R80-176)

Dear Mr. Scott:

By your letter dated August 1, 1980 you requested our opinion concerning the applicability of personal property tax penalties. Specifically, you ask whether the assessor, in assessing personal property, can use discretion in determining whether to apply a penalty under the provisions of A.R.S. § 42-252.B and whether the assessor, having determined a penalty to be proper, may use his discretion in determining the amount.

A.R.S. § 42-252.B provides:

"Any property knowingly concealed, removed, transferred or misrepresented by the owner or agent thereof to evade taxation shall, upon discovery, be liable for the tax ordinarily due that year, plus a penalty equal to such tax found due." [Emphasis added.]

As a general proposition, statutes may be classified as either mandatory or permissive. Use of the word "shall" generally requires a mandatory application, unless some other language within the act clearly indicates a different reading was intended by its drafters. State v. Sanchez, 119 Ariz. 64, 579 P.2d 568 (Ct.App. 1978). No such intent is evidenced herein or elsewhere within the property tax sections.

On the contrary, a thorough review of all property tax laws indicates a consistent intent to require accurate and prompt reporting of all property.

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Tax laws must be so construed as to make their application fair and to avoid arbitrary results. General Petroleum Corporation of Cal. v. Smith, 62 Ariz. 239, 157 P.2d 356 (1945). One way to avoid arbitrary results is to limit discretion in application. We can find no reason to assume that the Legislature intended to avoid the results of this general principle in drafting this legislation.

It is our opinion that the assessor has no discretion in applying the penalty required by this provision once a violation has been found. Of course, the assessor may weigh all relevant factors in determining whether property has been knowingly concealed, removed, transferred or misrepresented by the owner or agent.

Secondly, you have asked whether the assessor may use his discretion in determining the amount of penalty, if any is to be applied. Our answer to this question must be no. Anyone who violates the provisions of A.R.S. § 42-252.B must pay the tax ordinarily due plus a penalty equal to such tax found due. General rule of construction in Arizona is that taxing statutes are to be strictly construed, and their application cannot be extended to include something not specifically covered by the language of the statute. Corporation Commission v. Equitable Life Assur. Soc. of U.S., 73 Ariz. 171, 239 P.2d 360 (1952). This section clearly provides for no discretion in its application, and we can find no valid reason for implying such discretion.

Sincerely,



BOB CORBIN
Attorney General

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